

**ZONING BOARD OF APPEALS**

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ZBA 2009-68

Petition of James Gehan & Jennifer Ligibel
5 Thackeray Road

Pursuant to due notice, the Special Permit Granting Authority held a Public Hearing on Thursday, December 10, 2009, at 7:30 p.m. in the Juliani Meeting Room, 525 Washington Street, Wellesley, on the petition of JAMES GEHAN & JENNIFER LIGIBEL requesting a Special Permit/Finding pursuant to the provisions of Section XVII and Section XXV of the Zoning Bylaw that construction of a 5.7 foot by 11.4 foot deck, construction of a 16 foot by 22.5 foot two-story addition, construction of a 4 foot by 7.2 foot landing, and construction of a 10 foot by 10 foot one-story tool shed with less than required right side yard setbacks, on a 13,950 square foot lot in a district in which the minimum lot size is 15,000 square feet, at 5 THACKERAY ROAD, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

On September 21, 2009 the Petitioner filed a request for a hearing before this Authority, and thereafter, due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Tim Timko and James Gehan (the "Petitioner"). Mr. Timko said that it is an existing nonconforming lot with an existing nonconforming side yard setback. He said that they are looking to expand, remove and extend the existing tool shed that is behind the garage as well as add a dormer to the rear side. He said that the project is in conjunction with expanding the kitchen and some bedrooms upstairs. He said that the garage will not change from the street face.

The Board said that it did not see any reason for the tool shed to encroach in the side yard setback. The Board said that it was concerned about the double doors facing the side yard of the neighbors. Mr. Gehan said that the door height on the shed will be below any visibility level of the neighbor.

The Board said that the Petitioner is asking to take a small shed that sits on top of the ground, put a foundation underneath and make the shed a permanent encroachment. Mr. Timko said that the existing shed has a slab on concrete foundation. He said that the new basement will be under the main part of the addition but not under the proposed shed.

Mr. Gehan said that he cannot put two cars and equipment in the garage. Mr. Timko said that because of the slope, the existing shed is not functional for a snowblower or a lawnmower.

The Board asked about the stairs in the mudroom. Mr. Timko said that it is a second stairway to the second floor. The Board said that there is a closet in the mudroom that sticks into the storage space. The

Board said that without the closet the shed might fit into the side yard setback. Mr. Timko said that they could stay within the setback but the storage area would only be about 4 to 4.5 feet wide.

The Board said that there are no dimensions shown on the plans.

Mr. Timko said that he could design a shed to meet the setback. The Board said that a new plot plan and plans with dimensions should be submitted.

The Board voted unanimously to continue the petition to November 5, 2009.

November 5, 2009

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December 10, 2009

The Board said that because the same panel of Board members who heard the petition on October 8, 2009 was not able to attend the Public Hearing, the petition would be heard "de novo".

Presenting the case at the hearing were Tom Timko and James Gehan.

Mr. Timko said that a major issue of the Board was a concern that the tool shed would be substantially more detrimental to the neighborhood. He said that the bigger concern of the Board was that the submission was not complete enough to make an evaluation.

Mr. Timko said that the amended documents show dimensions as well as view lines of the height of the proposed shed. He said that there is also supporting documents from the neighbors and abutters.

Mr. Timko said that most of the work for this project will be well within the setback. He said that the existing property was built in 1939 with the garage in what is now the setback area. There is a small existing nonconforming shed in back of the garage. He said that they are looking to put a tool shed behind the garage that will extend the nonconformity. He said that, because of the slope of the property, they have not been able to come up with any other location that will work.

Mr. Timko displayed documentation of views of the tool shed from different angles from the abutters. He said that the tool shed would have a minor impact on the abutters. He said that most of the shed will not be visible. He said that only a small fraction of the gable roof will be visible over the fence.

The Board said that the proposed shed will be deeper than the existing shed. Mr. Timko said that because the side lot line tapers, the shed will be closer in than the end point of the existing shed. He said that the existing shed is shown on Plan 3. Mr. Gehan displayed a photo of the existing shed. The Board said that the existing shed appears to have a side setback of approximately 12 feet.

Mr. Gehan said that they submitted materials regarding the options that they looked at for locating a shed. He said that one option would be to move the garage to the other side of the house, which would substantially change the character of the house. He said that another option was to build a shed at the

back of the garage that would meet setback requirements. He said that shed would only be three feet wide, which would not give them enough space for a snowblower or a bike.

Mr. Gehan said that it would be difficult to access a shed for equipment such as a snowblower or lawnmower because of the slope of the lot. He said that there is a shed at the back of the property but it is not practical to use it on a snowy day. Mr. Timko said that it would be good to have access to the shed from the garage but it is more important to have a shed that is level to the driveway. He said that once you get past the back of the house, the lot slopes off at approximately 15-20 percent grade downhill. He said that there is no place else to store something that is heavy wheeled that can be brought to the driveway. He said that there is very little flat back yard.

Mr. Gehan said that they reviewed the plans with all of their neighbors. He said that some of the neighbors submitted letters to the Board. He said that the abutter on the right is Peter McAvinn, who gave a verbal okay to the project. He said that given the blockage of the fence and the slope of the land, Mr. McAvinn will not be able to see much of the shed.

Mr. Gehan said that he would not need the shed at the back of the property if he is allowed to build the proposed shed. He said that they would be willing to move that shed or remove it.

There was no one present at the Public Hearing who wished to speak to the petition.

Statement of Facts

The subject property is located at 5 Thackeray Road, on a 13,950 square foot lot in a district in which the minimum lot size is 15,000 square feet, with a minimum right side yard setback of 11 feet.

The Petitioner is requesting a Special Permit/Finding that construction of a 5.7 foot by 11.4 foot deck, construction of a 16 foot by 22.5 foot two-story addition, construction of a 4 foot by 7.2 foot landing, and construction of a 10 foot by 10 foot one-story tool shed with less than required right side yard setbacks, on a 13,950 square foot lot in a district in which the minimum lot size is 15,000 square feet, shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

A Plot Plan dated 8/17/09, stamped by Antoni Szareszunowicz, Professional Land Surveyor, Existing Floor Plans dated 4/21/09 & 4/23/09, Proposed Floor Plans dated 6/23/09 & 6/24/09, Elevation Drawings, dated 7/17/09, 7/18/09, 7/27/09, 8/08/09, 8/09/09 & 10/21/09, drawn by Copper Beech Design, and photographs were submitted.

On December 8, 2009, the Planning Board reviewed the petition and recommended that the petition be denied.

Decision

This Authority has made a careful study of the materials submitted and the information presented at the hearing. The subject structure does not conform to the current Zoning Bylaw, as noted in the foregoing Statement of Facts.

It is the finding of this Authority that construction of a 5.7 foot by 11.4 foot deck, construction of a 16 foot by 22.5 foot two-story addition, and construction of a 4 foot by 7.2 foot landing shall not be substantially more detrimental to the neighborhood, as it shall neither increase an existing nonconformity nor create a new nonconformity.

It is the finding of this Authority that although construction of a 10 foot by 10 foot one-story tool shed with less than required right side yard setbacks is increasing a nonconformity, such increase shall not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Therefore, a Special Permit is granted, as voted unanimously by this Authority at the Public Hearing for construction of a 5.7 foot by 11.4 foot deck, construction of a 16 foot by 22.5 foot two-story addition, construction of a 4 foot by 7.2 foot landing, and construction of a 10 foot by 10 foot one-story tool shed with less than required right side yard setbacks, subject to the following conditions:

1. The existing shed at the rear of the property shall be removed.
2. A second story cannot be added to proposed shed without coming back before the Board for approval.

The Inspector of Buildings is hereby authorized to issue a permit for construction upon receipt and approval of a building application and detailed construction plans.

If construction has not commenced, except for good cause, this Special Permit shall expire two years after the date time stamped on this decision.

APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN THE
OFFICE OF THE TOWN CLERK.

Cynthia S. Hibbard, Acting Chairman

Robert W. Levy

David G. Sheffield

cc: Planning Board
Inspector of Buildings
lrm